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TAGS: [PREL](#) [PGOV](#) [IZ](#)
SUBJECT: WHY VP ABDEL MEHDI REFUSED TO SIGN THE PROVINCIAL
POWERS LAW

REF: A. BAGHDAD 485
[1](#)B. BAGHDAD 573

Classified By: Political Counselor Matt Tueller for reasons 1.4 (b) and
(d)

[1](#)1. (C) Summary: Vice President Abdel Mehdi plans to send Council of Representatives (CoR) Speaker Mashadani a paper outlining sixteen specific objections to the Provincial Powers Law (PPL), along with proposed changes. While there is nothing in VP Abdel Mehdi's paper that would necessarily delay provincial elections (and indeed, the Council of Ministers is currently considering a draft elections law), the sheer number of objections is worrisome and may indicate obstructionism. Moreover, even in a best case scenario -- in which the CoR reconvenes as scheduled on March 18, promptly takes up the vetoed PPL and ultimately accepts all of VP Abdel Mehdi's arguments -- it would still be a stretch for the CoR to complete its study and debate of the revised law within the next 30-40 days. Moreover, the PMO may complicate matters by insisting that VP Abdel Mehdi's veto was unconstitutional (see para six). We expect to have a better sense of how and when the PPL will get back on track once ISCI party bloc leader Humam Hammoudi returns to Baghdad the weekend of March 8-9. End summary.

VP ABDEL MEHDI OFFERS A FEW MODEST SUGGESTIONS

[1](#)2. (C) VP Abdel Mehdi told the Ambassador March 4 that he will send a letter to CoR Speaker Mashadani spelling out his reasons for vetoing the law and proposing amendments to "fix" the law. He told the Ambassador he is awaiting input from VP Hashimi and President Talabani before finalizing his letter to Mashadani. However, VP Abdel Mehdi previewed his arguments in a meeting with provincial governors earlier this week, during which he defended his decision on February 26 to veto the legislation.

VP ABDEL MEHDI'S OBJECTIONS

[1](#)3. (C) Specifically, Vice President Abdel Mehdi raised the following arguments:

- Legislative Authority (Article 2/First): VP Abdel Mehdi wants to add language (see quotes) to this provision which gives PCs the highest legislative and oversight authority within provincial boundaries and enables PCs to issue local legislation as long as it does not contradict the Constitution and Federal laws "related to exclusive competencies of the Federal Government." VP Mehdi argues that because Article 115 says that all powers not "exclusive" to the federal government belong to the provinces, the provinces should be given priority in all cases where there are non-exclusive federal powers.

- Provincial Oversight by the CoR (Article 2/Second): VP Abdel Mehdi objects to PCs and local councils being subject to oversight by the CoR, using several provisions of Article 122 (Second, Third, Fifth) in the Constitution as the basis for his argument. These provisions say provinces shall be granted broad administrative and financial authority to manage their affairs; a governor elected by a PC is deemed the highest executive official; and a PC shall not be subject to the control or supervision of any ministry or any institution not linked to a ministry and should have independent finances. He also argues Article 61 does not give the CoR oversight over the legislative branch -- only the executive branch -- unless this authority is limited to "fact finding" only.

- Issuing Local Regulations/Legislation (Article 7/Third): This provision allows PCs to issue regulations, by-laws, and systems regulating administrative affairs in a province. VP Abdel Mehdi's arguments on this point are similar in nature to overall legislative authority (Article 2, First) and their contradiction to Article 115 of the Constitution.

- Outlining Provincial Policies in Coordination with Relevant Ministries (Article 7/Fourth): VP Abdel Mehdi recommends adding language that these policies and plans for the provinces should be developed "in the field of exclusive and joint jurisdictions between the Federal Government and Provinces." VP Abdel Mehdi then cites Constitutional Articles 105, 106, 112, 113, 114, and 115 as examples where the rights of provinces and regions need to be preserved in administering the country's federal institutions, resources, and policies. He recommends this added language (above in quotes) ensures the rights of the provinces are provided for outlined in the Constitution.

- Budget (parts of Articles 7, 31, 44, and 52): VP Abdel

Mehdi highlights areas that pertain to the budget and provincial authority over resources in his comments. He also highlights the relevant articles that include relevant language to budgets. VP Mehdi criticizes the lack of a proper definition for the general budget to a province, how these financial resources are determined, and authorities of the province to transfer funds as some of his key issues. His analysis on these areas is extremely detailed and focused on legal terminology.

- CoR Dismissing a Governor with Absolute Majority, by Suggestion of PM (Article 7/Eight/2): VP Abdel Mehdi wants to cancel the provision that would grant the CoR and the PM a role in dismissing a governor. Failing that, he proposes granting this authority to the Federation Council, which must be formed in accordance with Article 65 of the Constitution and will include representatives of regions and provinces. (This is called a "Higher Board" in Article 45 of the provincial powers law). He also refers to the Constitution of India, where the President both hires and fires a governor. He argues that the person/entity responsible for hiring a governor should be the one to dismiss as well.

- Dismissal of those in senior positions (i.e. DGs) (Article 7/Ninth/2): VP Abdel Mehdi suggests adding language (in quotes) that the PC, based on one-fifth of its members and suggestion of a governor can dismiss a senior official "by the Council of Ministers based on a proposal by the component Minister." He contends that in its current form, the article contradicts Article 115 of the Constitution and places senior officials under numerous administrations. He argues PCs should be entrusted with this final task.

- Determining Priorities of a Province (Article 7/Fifteenth): This article gives provinces the authority to determine priorities, policies, and strategic plans, in a way that does not contradict national development. VP Abdel Mehdi would like to add language that says, "if these plans are related to the exclusive powers of the Federal Government."

- Approval and Coordination of Layouts of District with PC and Federal Government (Article 8/Seventh): VP Abdel Mehdi

argues for adding language in this article that district councils can approve designs as long as they are coordinated with the PC and by outline of the Federal Government "if these layouts are related to the exclusive powers of the Federal Government.

- CoR's Ability to Dissolve a PC (Article 20/Second): This provision gives the CoR the ability to dissolve a PC by an absolute majority based on a request of the governor or one-third of its members. VP Abdel Mehdi objects to this provision because the PC is a body elected directly by a province and appoints the governor. He further states that the CoR is not given any authority in this area in its competencies in Article 61 of the Constitution. He suggests the Federation Council as an alternative entity (Article 65 of the Constitution). (This is the same as the Higher Board in Article 45 of the provincial powers law).

- Ambiguity in Language regarding Dissolution of "the

council" and holding PC elections (Article 21/First): VP Abdel Mehdi's comments in this section are meant to clarify ambiguous language relating to "councils." He adds language that this should refer to "local councils," but essentially is striving to obtain more clarity whether this article applies to provincial, district and sub-district councils.

- Governor, Qa'im-maqam (District Director) and Sub-District Directors are CEOs (Article 23): VP Abdel Mehdi contends the definition of the Governor, the Qa'im-maqam and Sub-district Director are inconsistent with Article 123/Third of the Constitution pertaining to role of the Governor. However, he appears to be one numeral off in his analysis and in reality is referring to Article 122/Third of the Constitution which states, "the governor elected by the PC is considered the highest CEO in the province."

- Presidential Decree for Appointment of a Governor (Article 26/First): VP Abdel Mehdi asks for more clarity in this article that a governor must exercise his authorities fifteen days after his election, rather than assuming these duties when the President issues his decree. In either event, the time period required for the presidential decree is fifteen days.

- Implementing Federal Government policy within a Province (Article 31/Third): VP Abdel Mehdi suggests adding language that a governor can implement public policy established by the federal government "under exclusive or joint authorities agreed upon within the boundaries of the province." VP Abdel Mehdi argues, as drafted, this article is inconsistent with

Article 115 of the Constitution, which gives those priority to the provinces for those authorities not exclusively given to the Federal Government.

- Establishing new Universities, Colleges, and Institutes in a Province (Article 31/Sixth): VP Abdel Mehdi recommends minor changes in this section, indicating that provinces should "consult" rather than "coordinate" with the Ministry of Higher Education in establishing new universities, colleges, and institutes.

- Establishing a Higher Board for Coordination Between the Provinces and Federal Government (Article 45): VP Abdel Mehdi does not have any problems in keeping this article in the provincial powers law. However, as written, VP Abdel Mehdi argues if the PM is given too much authority over governors, it will appear they are his "employees" and contradict the principle of decentralization in the Constitution.

WHAT IT MEANS

15. (C) In conclusion, VP Abdel Mehdi claims that the PPL called for provincial councils "on" October 1, 2008. In fact, the PPL says provincial elections should occur "by"

October 1, 2008. While this could be an innocent error, it might also be an attempt to push provincial elections as far back as possible. Certainly the number of objections raised in Abdel Mehdi's letter suggests that ISCI's priority is anything other than achieving a quick fix to the law.

¶6. (C) In another twist, PM Maliki's Chief of Staff, Dr. Tariq Abdallah, told the DCM on 3/5 that the PMO believes Abdel Mehdi's veto is invalid, since Article 138 of the Constitution stipulates that the Presidency Council "shall issue its decisions unanimously." Since neither President Talabani nor Vice President Hashimi joined VP Abdel Mehdi in vetoing the law, the PMO argues that the law was automatically ratified ten days after its passage in the CoR.

The PMO has previously cited the same legal grounds in objecting to vetoes by Vice President Hashimi; in those cases, the CoR chose to ignore the PMO's argument. We suspect that the CoR will once again trump the PMO on this point, although neither path -- a contentious legal battle between the PMO and the Presidency Council nor renewed horse-trading in the CoR -- promises a solution within the first month of the CoR reconvening in late March.

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